

Appln. No.: 10/754,378
Filing date: January 9, 2004
Amendment dated October 13, 2009
Reply to Office Action mailed July 13, 2009

REMARKS

Claims 1-2 and 4-40 are pending in the Application, all of which stand rejected by the Office Action mailed July 13, 2009. Claims 1, 2, and 20 are amended by this response. Applicants respectfully submit no new matter is added by these amendments. Claims 1 and 20 are independent claims, while claims 2 and 4-19, and claims 21-40, depend either directly or indirectly from independent claims 1 and 20, respectively.

Applicants respectfully request reconsideration of the pending claims, in light of the following remarks.

Rejection of Claims Under 35 U.S.C. §103

Claims 1-2, 4-12, and 14-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hayes, Jr. *et al.*, U.S. Patent No. 5,974,312 (hereinafter "Hayes") in view of Naito *et al.*, U.S. Patent Application Publication No. 2004/0153549 (hereinafter "Naito"). Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Hayes in view of Naito, and further in view of Marsh *et al.*, U.S. Patent Publication No. 2002/0073304 (hereinafter "Marsh"). Claims 20-22 and 24-38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Sadowsky, U.S. Patent No. 6,123,737 (hereinafter "Sadowsky"). Claims 23 and 39-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Sadowsky in view of Hayes.

Independent claims 1 and 20 are amended by the present response to clarify even further patentably distinct aspects of the presently claimed subject matter, as further detailed below. However, Applicants begin by again noting that the burden is on the Office Action to present a *prima facie* case of obviousness. (See MPEP §2142.) This burden may not be met by mere conclusory statements. (See *id.*) Instead, the analysis supporting a rejection should be made explicit, and there must be some articulated reasoning with some rational underpinning to support the conclusion of obviousness. (See *id.*) "The key to supporting any rejection under 35 U.S.C. 103 is the

clear articulation of the reason(s) why the claimed invention would have been obvious.” (*Id.*) As previously submitted, Applicants again respectfully submit that the Office Action does not present a *prima facie* case of obviousness for the pending claims. Further, Applicants respectfully submit that the responses to Applicants’ previous discussion in the Office Action do not remedy the lack of a *prima facie* finding of obviousness in the previous Office Action.

For example, the Office Action asserts that “KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness.” (See Office Action at p. 3.) Nonetheless, the Office Action still must support its rejection with an explicit analysis, with articulated reasoning and rational underpinning. Instead, the Office Action presents unsupported assertions, such as that “the authentication of the devices in Hayes is predicated upon verifying and/or authenticating the sent notification from the wireless programmer.” (See *id.* at p. 4.) However, the “authentication” of Hayes is shown, for example, in Fig. 5C, as relating to an “ESN,” or electronic serial number. The Office Action provides no explanation or rationale, nor any citation to any portion of Hayes that explains how such an authentication of an ESN would be somehow “predicated” on authenticating the notification itself instead of the device. To the extent any future Office Actions maintain such a rejection, Applicants respectfully request a clear articulation of how Hayes is purportedly “predicated” upon an authentication as claimed, with a specific identification of where Hayes purportedly provides such a teaching. As another example, the Office Action, again without support or citation, (and with an improper, unsupported conclusory assertion that “a person of ordinary skill in the art would recognize that any of the servers 2(1) – 2(n) could serve as the management server”) asserts that it would somehow be obvious to replace one of Sadowsky’s servers with a management server. (See *id.* at p. 15.) Again, to the extent any such rejection is maintained in future Office Actions, Applicants respect a clear articulation of how such a modification would have been obvious, and proper support for such an assertion.

In any event, independent claims 1 and 20 are amended as indicated above and discussed in further detail below. Applicants respectfully submit that the asserted combinations do not teach, suggest, or otherwise render obvious the presently claimed subject matter, and that the pending claims are allowable over the asserted combinations. Applicants respectfully request the withdrawal of the present rejections and the allowance of the present claims.

Claims 1-2, 4-12, and 14-19 are allowable over the cited art.

Applicants begin by addressing the rejection of independent claim 1 (and dependent claims 2, 4-12, and 14-19 that depend from claim 1). Claim 1 is amended by the present response to recite “[a] method of updating, the method comprising: **informing a notification history server of notifications sent by authorized senders, the notification history server keeping a record of authorized notifications, the notification history server being distinct from the authorized senders**; receiving a notification in an electronic device that an update is available from a sender; determining the authenticity of the received notification in the electronic device **by sending, by the electronic device, information retrieved from the received notification to the notification history server, and determining whether the notification history server has a record of the notification using the information sent by the electronic device**; and downloading the available update from the sender if the notification history server confirms knowledge of the notification.” Additional support for this amendment may be found, for example, in the Specification at ¶¶ 51-57. Thus claim 1 requires informing a distinct notification history server of notifications sent by authorized senders (again, the notification history server is distinct from the authorized senders) and determining the authenticity of notifications received by the electronic device, by the electronic device sending, to the notification history server, information retrieved from the received notification, and determining whether the notification history server has a record of the notification. Put another way, the authenticity of information received by an electronic device from a first entity (a sender)

is determined by the electronic device contacting a distinct second entity (a notification history server), and determining if that distinct second entity has a record of the notification.

Applicants respectfully submit that the cited art, either alone or in combination, does not teach, suggest, or otherwise render obvious the presently claimed subject matter. For example, claim 1 expressly requires that the notification history server (which is contacted to determine the authenticity of the notification) is distinct from the sender (which sends the notification). Thus, claim 1 expressly requires that an entity distinct from the sender of a notification keep a record of authorized notifications and be utilized in the determination of whether the notification is authentic. Hayes, even as asserted by the Office Action does not teach such subject matter, as the Office Action relies upon “the wireless programmer” of Hayes for both the “notification history server” and the “notification” being authenticated (“...that the wireless programmer 200 has been authenticated”) (See Office Action at p. 7; see *also id.* at p. 3-4.) Further still, such authentication of a “wireless programmer” does not teach authentication of a “notification” as claimed by claim 1, which expressly requires, for example, that the notification be received by the electronic device. Yet further still, the purported “authentication” of Hayes does not teach, as another example, determining the authenticity of the received notification by sending information received from the notification to the notification history server, and determining whether the notification history server has a record of the notification received by the electronic device.

Nor can the assignment notification server of Naito remedy these shortcomings in the teachings of Hayes. First, as discussed in previous submissions, the assignment notification server of Naito does not teach a notification history server as presently claimed. This is even more so in light of the present amendments. Further still, the Office Action even admits that Naito does not teach the substance of the claimed subject matter, stating “Naito is used only for the purpose using the keyword notification server.” (See Office Action at p. 4.) (Applicants note further still that Naito’s purported “keyword” of “notification server” does not even include “history.”) In any event, the

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notification history server as fully set forth by the presently claimed subject matter, as well as the claimed determining of the authenticity of the received notification as fully set forth by claim 1, is quite different, and patentably distinct, from the assignment notification server of Naito.

For at least the above discussed reasons, in addition to those detailed in previous submissions, Applicants respectfully submit that the cited references, either alone or in combination, do not render claims 1-2, 4-12, and 14-19 obvious, and that those claims are allowable.

Claim 13 is allowable over the cited art.

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Hayes in view of Naito, and further in view of Marsh. Claim 13 depends from claim 1. The Office Action does not assert Marsh as teaching the above discussed shortcomings in the teachings of Hayes and Naito, and Applicants respectfully submit that Marsh does not remedy those deficiencies in the teachings of the previously discussed art. Therefore, Applicants respectfully submit that the proposed combination, either alone or in combination, does not teach, suggest, or otherwise render obvious the subject matter claimed by claim 13, and that claim 13 is allowable, for at least the reasons discussed above in connection with claim 1.

Claims 20-22, and 24-38 are allowable over the cited art.

Claim 20 is amended by the present response in generally similar fashion to claim 1. Namely, claim 20 is amended to recited “[a] mobile services network at least comprising: at least one electronic device; a management server communicatively linked with the at least one electronic device via a communication link; and a notification history server operatively connected to the management server, the notification history server comprising a record of authentic notifications sent to the at least one electronic device **by authorized senders, the authorized senders being**

distinct from the notification history server; wherein the electronic device is adapted to determine the authenticity of **a notification received from a sender** by contacting the notification history server and **determining whether the notification history server has a record, from one of the authorized senders, of the notification received by the electronic device.**” Thus claim 20 similarly requires a first entity or entities (authorized senders) that send notifications to an electronic device, and a distinct second entity (notification history server) that is contacted by the electronic device to determine the authenticity of a notification received by the device, where the authenticity is determined by determining whether the notification history server has a record, from one of the authorized senders, of the notification that the electronic device has received. Applicants respectfully submit that the cited art does not render the presently claimed subject matter obvious.

For example, the servers of Sadowsky (“server 2(1)-2(n)”) are asserted as teaching both the management server and the notification history server of claim 20. (See Office Action at p. 15.) As an initial matter, Applicant respectfully submits servers as described by Sadowsky cannot teach the management server and notification history server. For example, the Office Action recognizes that Sadowsky does not explicitly use the term management server, but then states, “However a person of ordinary skill in the art would recognize that any of the servers 2(1)-2(n) could serve as the management server.” (See Office Action at p. 15.)

However, the Office Action provides no support for this assertion. Applicants submit that, as such, the rejections are improper. (See, *e.g.*, MPEP § 2144.03(A): “It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known” (emphasis in original); “It is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.”)

Applicants respectfully traverse the apparent assertion of Official Notice as further set forth below. Alternatively, if the Examiner’s assertions are based on the

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personal knowledge of the Examiner, then under MPEP §2144.03(C) and 37 C.F.R. §1.104(d)(2), the Examiner's assertions must be supported by an affidavit from the Examiner.

Applicants respectfully submit that the subject matter of the above described obviousness assertions in the Office Action are not well-known as shown by the searched and cited prior art. As part of the Examiner's obligation in examining the present application under MPEP §904.02, Applicants submit that the Examiner performed "a thorough search of the prior art." (*Id.*) No prior art found in that thorough search (which is indicative of the knowledge of the art) yielded the teachings asserted in the Office Action. Applicants respectfully submit that if the teachings asserted in the Office Action were "capable of instant and unquestionable demonstration as being well-known," then the subject matter would have appeared in the Examiner's thorough search of the prior art. In fact, Sadowsky states, "Within each server computer 2 is a server software module 6 that has been designed to perform method steps of the present invention." (Sadowsky at 2:23-25.) Thus, Sadowsky teaches each of the "servers" as performing similar functions, and therefore would teach against somehow having one of such "servers 2(1)-2(n)" being switched to act as a management server. This is so whether or not different types of computers are used as the "servers." Such a teaching contradicts the Office Action's unsupported assertion that "a person of ordinary skill in the art would recognize that any of the servers 2(1)-2(n) could serve as the management server."

In any event, claim 20 is also amended by the present response as detailed above, and Applicants respectfully submit that Sadowsky does not teach the authorized senders and notification history server (which is again, distinct from the authorized senders) as claimed by amended claim 20. Further, Applicants respectfully submit that Sadowsky does not teach determining the authenticity of a notification by contacting such a notification history server and determining whether the notification history server has a record of the notification received by the electronic device as fully set forth by claim 20.

Applicants further respectfully submit that Sadowsky does not teach determining the authenticity of a notification received from a sender by contacting the notification history server and determining whether the notification history server has a record, from one of the authorized senders, of the notification received by the electronic device. For example, the Office Action asserts that Sadowsky teaches “wherein the electronic device is adapted to determine the authenticity of the notifications by contacting the notification history server (see figs. 3, which discloses authentic and valid 64).” (Office Action at p. 15.) Sadowsky describes its step 64 as follows:

At step 64, optional but highly desirable authentication and validity substeps are performed. For example, the authentication substep can establish that a legitimate person and not a spoofer originated push trigger 10. This can be accomplished by having previously encrypted all or a portion of push trigger 10 and having the authentication substep decrypt the previously encrypted information. Alternatively, the authentication could be performed by cryptographic authentication, e.g., by a method of digital signatures. The digital signature ties the contents of a specific software package 18 with the contents of a specific push trigger 10. The digital signature is added to trigger 10. After arrival of trigger 10, software 6 (at step 64) reads the digital signature from trigger 10 and recomputes the digital signature based upon the contents of trigger 10 and the contents of software package 18. If the computed digital signature matches the digital signature stored in trigger 10, then trigger 10 is authentic. If not, trigger 10 is a forgery.

(Sadowsky at 3:31-49.) Thus, while Sadowsky does mention authentication, the authentication described in Sadowsky is very different from, and does not teach the presently claimed subject matter. For example, authenticating such a “trigger,” and such encryption and/or digital signatures as discussed in Sadowsky, are quite different from an electronic device that is adapted to determine authenticity of a notification received from a sender by contacting a notification history server (that is distinct from the sender) and determining whether the notification history server has a record, from one of the authorized senders, of the notification received by the electronic device, as

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presently claimed. Instead, the asserted authentication of Sadowsky merely relates to the use of encryption and/or digital signatures.

For at least the reasons discussed above, Applicants respectfully submit that the cited references do not teach, suggest, or otherwise render obvious claim 20 or any claim that depends therefrom, and that those claims are allowable.

Claims 23 and 39-40 are allowable over the cited art.

Each of claims 23 and 39-40 depend from claim 20, which Applicants submit is allowable as discussed above. Applicants respectfully submit that Hayes does not remedy the shortcomings in Sadowsky discussed above. Therefore, for at least the reasons discussed above, Applicants respectfully submit that the cited art does not render obvious any of those claims, and that those claims are allowable.

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Conclusion

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, Applicants will not address such statements at the present time. However, Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicants believe that all of the pending claims are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, Applicants invite the Examiner to contact the undersigned at (312) 775-8000 for an interview.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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